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ABSTRACT

This policy paper focuses on religious challenges to the public school curriculum, specifically those involving claims that public schools are prompting "secular humanism"--an allegedly antitheistic creed that places human reason above divine guidance. While some courts have recognized that "secular humanism" may be considered a "religion" for First Amendment purposes, the judiciary has repeatedly rejected charges that specific courses and materials unconstitutionally promote this "creed" in public schools. Nonetheless, there are mounting efforts to secure judicial and legislative prohibitions against the promotion of "secular humanism" in public education. Courts have been receptive to requests for curriculum exemptions and religious accommodations unless they impede students' academic progress or the management of the school. The Supreme Court has also distinguished the permissible academic study of religion from unconstitutional religious indoctrination. Yet several recent studies have indicated that the historical role of religion in western civilization is given insufficient attention in the public school curriculum. Correcting such distortions might avert some of the claims that public schools are advancing "secular humanism." These religious challenges raise two troublesome issues for educational policymakers: (1) balancing governmental interests and parental interests in educating children; and (2) guaranteeing religious neutrality, rather than advancement or hostility, in the public school curriculum. (Author/TE)

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RELIGIOUS CHALLENGES TO THE PUBLIC SCHOOL CURRICULUM

Policy Memo Series No. 3 March 1988

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Executive Summary

This policy paper focuses on religious challenges to the public school curriculum. The most sensitive controversies have involved claims that public schools are promoting "secular humanism"--an allegedly antitheistic creed that places human reason above divine guidance. Some courts have recognized that secular humanism may be considered a "religion" for first amendment purposes, but the judiciary has repeatedly rejected charges that specific courses and materials (e.g., evolution, values clarification, sex education, and books used in English and home economics courses) unconstitutionally promote this creed in public schools. Nonetheless, there are mounting efforts to secure judicial and legislative prohibitions on the promotion of secular humanism in public education.

Courts generally have been more receptive to requests for curriculum exemptions (e.g., excusal from reading a specific novel in an English course) and religious accommodations (e.g., release of students during the school day to receive religious instruction off public school grounds) than they have been to direct attacks on components of the curriculum. However, religious exemptions have not been honored where the student's academic progress or the management of the school would be impeded. Also, accommodations that would advance religion (e.g., laws requiring instruction in the Biblical account of creation whenever evolution is introduced) have not been allowed by the federal judiciary.

The Supreme Court has distinguished the permissible academic study of religion from unconstitutional religious indoctrination. Yet, several recent studies have indicated that the historical role of religion in western civilization is given insufficient attention in the public school curriculum. If such curriculum distortions were corrected, possibly some of the claims that public schools are advancing secular humanism could be averted.

Religious challenges to the public school curriculum show no signs of dissipating, and all three branches of government have become involved in these volatile controversies. Among troublesome issues facing educational policymakers are: (a) balancing governmental interests in assuring an educated citizenry and parental interests in directing the upbringing of their children, and (b) guaranteeing religious neutrality, rather than advancement or hostility, in the public school curriculum.

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RELIGIOUS CHALLENGES TO THE PUBLIC SCHOOL CURRICULUM

Religious challenges to public school courses and instructional materials have escalated during the past decade. These challenges raise sensitive questions regarding students' rights to receive information, the state's duty to ensure an educated citizenry, and parents' rights to direct the upbringing of their children. Federal courts have been called on with increasing frequency to apply the first amendment of the United States Constitution to school controversies. The first amendment in part prohibits governmental action respecting an establishment of religion (establishment clause) or interfering with the free exercise thereof (free exercise clause). In addition to judicial interpretations of the religion clauses, the executive and legislative branches of government have become involved in the volatile debate over the role of religion in public education.

The purpose of this policy paper is to examine (a) assertions that public schools are unconstitutionally promoting an antitheistic creed, (b) requests for religious exemptions from public school activities, (c) religious accommodations in public schools, and (d) disputes over the academic study of religion in public education. In a concluding section, implications for educational policymakers are highlighted.

Assertions that Public Schools are Promoting "Secular Humanism"

The most sensitive religious challenges have focused on claims that public schools are promoting "secular humanism"--an allegedly antitheistic creed that places human reason above divine

guidance. The Religious Right contends that secular humanism has the characteristics of a "religion" for first amendment purposes in that it is a belief system with a moral code (Whitehead & Conlan, 1978). Fundamentalist groups argue that governmental advancement of secular humanism in public schools violates the establishment clause, and they broadly define secular humanism as encompassing any instruction that does not promote Christian tenets.

Those who profess to be secular humanists (about 3000 belong to the American Humanist Association) tend to define this philosophy much more narrowly than do those attacking the creed (Sorenson, 1986; Kurtz, 1981). They do not consider it a "religion" or a substitute for a theistic belief as a world view and guide to action. Paul Kurtz, editor of a humanist magazine, Free Inquiry, testified in a recent trial that secular humanism is not a doctrine or dogma and does not proselytize or hold "an absolute claim to truth" as do theistic beliefs (Smith v. Board of School Commissioners of Mobile County, 1987, pp. 964-965).

Several courts have recognized that secular humanism--if defined as a creed that "preaches" antitheism--may be considered a "religion" under the first amendment (Grove v. Mead School District No. 354, 1985; Rhode Island Federation of Teachers AFL/CIO v. Norberg, 1980; Fink v. Board of Education of the Warren County School District, 1982; Reed v. VanHoven, 1965). Thus, public schools would be violating the establishment clause if they advanced secular humanism by teaching students to disavow God

or to disregard their religious upbringing in forming their values. However, courts have not accepted the assertion of fundamentalist groups that secular humanism encompasses all instruction that does not promote Christian tenets. Rather than endorse the contention that instruction is either theistic or antitheistic, the judiciary has reasoned that there is a large body of religiously neutral content that is appropriate for public schools. Allegations that specific public school activities or materials promote secular humanism have not yet been successful.

Sex education and instruction in evolution have been central targets of these attacks, and courts have not been persuaded that such instruction advances an antitheistic faith. Courts have consistently rejected challenges to the school board's authority to include sex education in the curriculum, reasoning that such instruction presents public health information pursuant to appropriate educational objectives and does not promote disrespect for traditional theistic creeds (McCarthy, 1983). In the leading case in this regard, the New Jersey Supreme Court in 1982 found nothing in the sex education curriculum guidelines suggesting antagonism toward religion or support of nonreligion, and the United States Supreme Court declined to review this decision (Smith v. Ricci, 1982).

Similarly rejecting claims that instruction in evolution unconstitutionally advances "secularism," courts have reasoned that evolution is a scientific theory and connected to an antitheistic creed by "too tenuous a thread on which to base a

first amendment complaint" (Wright v. Houston Independent School District, 1972, p. 1210). The judiciary has concluded that instruction in evolution is designed to present a body of scientific knowledge and "not to advance a religious theory or to inhibit . . . religious beliefs" (Crowley v. Smithsonian Institute, 1978, p. 727).

Instructional materials, as well as course offerings, have been subject to attack, and again courts have not been receptive to assertions that particular books unconstitutionally advance secular humanism. In a West Virginia censorship controversy, the federal district court concluded that it would take "a complete loosening of the imagination" to find that use of the allegedly Godless, anti-Christian English series in public schools constitutes an establishment of the religion of secular humanism (Williams v. Board of Education of the County of Kanawha, 1975).

In a more recent case, the Ninth Circuit Court of Appeals rejected a challenge to a high school's use of the book, The Learning Tree, by Gordon Parks. A student who found the book religiously offensive had been excused from reading the novel, but her parents sought additional relief. They claimed that the book was inappropriate for the English curriculum because it promoted an antitheistic faith. Acknowledging that secular humanism may be a religion that is subject to establishment clause restrictions, the court found nothing in the contested book that disavowed traditional theistic beliefs. In a concurring opinion, Judge Canby declared:

> . . .[P]laintiffs have not alleged facts showing anything remotely resembling an establishment of a religion of secular humanism. . . . The Learning Tree was neither purchased from nor provided by official humanist organizations. Nor does the work carry the imprimatur of these or similar religion-philosophical bodies. (Grove v. Mead School District No. 354, 1985, pp. 1537-1538)

The court concluded that the book about a black, teenage boy was included in the curriculum for the nonreligious and appropriate purpose of exposing students to different cultural attitudes and outlooks.

The most recent decision involving the alleged promotion of secular humanism in public schools was Smith v. School Commissioners of Mobile County, Alabama (1987). This case received substantial publicity because the Alabama federal district court ruled that secular humanism constitutes a "religion" for first amendment purposes. Judge Hand, writing for the court, reasoned that secular humanism "as a belief system, erects a moral code," and humanist organizations "proselytize and preach their theories" (p. 981). Judge Hand accepted testimony of expert witnesses who indicated that since the 1930s the teaching profession and textbook publishers have been influenced by the secular humanist philosophy of John Dewey and his followers, and that this philosophy now permeates public school instruction. Accordingly, the judge ordered several dozen history, social studies, and home economics books removed from the Mobile County

RELIGIOUS CHALLENGES TO THE PUBLIC SCHOOL CURRICULUM

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schools because they advanced secular humanism by (a) omitting references to the significance of theistic religion in western civilization, (b) exposing students to values that conflict with Biblical teachings (e.g., nontraditional roles for women), or (c) indicating that moral judgments are based on personal choices rather than Biblical absolutes. Judge Hand declared that the suppression of Christian tenets in the curriculum results in the establishment of an opposing religion--secular humanism.

The Eleventh Circuit Court of Appeals reversed Judge Hand's decision, reasoning that the contested books were religiously neutral and did not promote antagonism toward theism. The court concluded that the presentation of moral values in terms of individual choices does not imply that religious convictions should be disregarded in making those choices. While noting that some books may not give sufficient attention to the historical influence of religion in American life, the appeals court concluded that such omissions do not constitute a first amendment violation (Smith v. Board of School Commissioners of Mobile County, 1987).

The only decision in which a federal appellate court has found an establishment clause violation in connection with a nontraditional faith dealt with an experimental course in transcendental meditation (TM) in five New Jersey public high schools (Malnak v. Yogi, 1979). The Third Circuit Court of Appeals ruled that TM is based on the Science of Creative Intelligence, which possesses the characteristics of a religion

and elevates this philosophy to the level of theology. This decision is noteworthy because the court was willing to find an establishment clause violation involving a creed other than a theistic faith (O'Neil, 1981).

Although courts have not been persuaded that specific instructional materials or content promote secular humanism, controversies over secular humanism have not been confined to judicial forums. Legislation prohibiting instruction in secular humanism has been introduced in Congress and several states. In 1984, Congress amended the federal law providing grants for magnet schools to prohibit the money from being used for instruction in "secular humanism" (Education for Economic Security Act). Neither the law nor its regulations defined "secular humanism," and a group of prominent authors challenged the law as unconstitutionally restricting free expression ("Authors Sue," 1985). However, before the case went to trial, the controversial amendment pertaining to secular humanism was removed from the law. Nonetheless, legislative bodies continue to consider similar provisions, and charges that public schools are promoting secular humanism seem destined to escalate. Federal courts will likely be pressed to determine whether secular humanism is a religion under the first amendment, and if so, what constitutes this creed.

Religious Exemptions

Because conservative parent groups have not secured judicial rulings barring allegedly humanistic content from the curriculum, they often have requested that their children be excused from

exposure to religiously offensive materials and activities. Such requests for exemptions are usually grounded in the first amendment's protection of the free exercise of religious beliefs. Some parents have asserted that required exposure to allegedly antitheistic activities and materials places an unconstitutional burden on the practice of their religious faith.

Traditionally, courts have been more receptive to requests for religious exemptions than to direct attacks on the public school curriculum. For example, courts have ordered school authorities to excuse children on religious grounds from mandatory participation in the pledge of allegiance to the American flag, officers' training programs, sex education, and coeducational physical education classes (McCarthy & Cambron-McCabe, 1987). Courts also have condoned excusing students from certain religiously offensive instructional assignments (e.g., reading a specific novel in an English course) where alternative assignments can be used to attain the school's objectives (Grove v. Mead School District No. 354, 1985).

Amish youth have even been exempted from compulsory school attendance after successful completion of the eighth grade. In Wisconsin v. Yoder (1972), the Supreme Court recognized that although education ranks at the "apex" of governmental functions, in this case the parents' interest in determining the religious upbringing of their children outweighed the state's interest in mandating an additional two years of high school for Amish youth. The Court was careful, however, to restrict its ruling to Amish

students being prepared for a cloistered agrarian community rather than for mainstream American society.

Courts have drawn the line where the religious exemption would interfere with the management of the school or with students' educational progress or their health and safety. For example, a Pennsylvania court rejected Muslim parents' request for their children to be absent every Friday for religious reasons; the court concluded that the requested exemption would seriously impede the students' academic progress (Commonwealth v. Bey, 1950). Also rejected was a request by fundamentalist parents for their children to be excused every time audiovisual equipment was used because such a religious accommodation would disrupt the management of the instructional program (Davis v. Page, 1974). Religious exemptions from safety and training regulations for athletic activities have also been denied because of the school's compelling interest in protecting the health and safety of students (Menora v. Illinois High School Association, 1982; Keller v. Gardner Community Consolidated Grade School, 1982).

In a recent Tennessee case, Mozert v. Hawkins County Public Schools (1987), the Sixth Circuit Court of Appeals denied a request for 17 fundamentalist children to be excused from exposure to the Holt, Rinehart, and Winston reading series used in grades one through eight in the school district. The fundamentalist parents claimed that exposure of their children to the humanistic content in the books impaired the practice of their religious beliefs. The appeals court overturned the federal district

court's order that required the school district to allow the 17 children to "opt out" of reading instruction and study reading at home with their parents as long as they made satisfactory progress on standardized reading tests. Concluding that all children could be required to read the adopted series, the appeals court reasoned that, unlike mandatory participation in the pledge of allegiance (which requires affirmation of a belief), exposure to the contested reading series does not entail acceptance of the ideas in the books. Proof was not presented that use of the series was accompanied by requests for students to affirm or deny a religious belief or to engage in any act forbidden by their religious convictions. In February, 1988, the United States Supreme Court declined to review the appellate court's decision.

It should be noted, however, that parents do not have to rely solely on the first amendment in requesting religious exemptions for their children. Recent federal and state legislation has addressed parents' rights to secure curriculum exemptions for their children. The most significant federal law is the 1978 amendment to the General Education Provisions Act (commonly called the Hatch Amendment) that requires parental consent before students participate in federally supported programs involving psychiatric or psychological examination, testing or treatment designed to reveal information in specified sensitive areas. This provision attracted little attention until 1984 when the Department of Education issued regulations pursuant to the law (34

C.F.R. Part 98, 1984). Shortly after the Department of Education's regulations went into effect, the Eagle Forum and other conservative parent organizations launched a national campaign urging parents to seek exemptions for their children from public school activities such as values clarification, role playing, instruction pertaining to alcohol and drug abuse, sex education, instruction in evolution, keeping log books or personal journals, and participating in sociograms and personality tests ("Schlafly Calls," 1985; "Hatch Shuns," 1985). These conservative organizations have broadly interpreted the Hatch Amendment as applying to all classroom instruction, library books, and curriculum materials.

In response to the activities of the Eagle Forum and allied groups, a coalition of over thirty education and civil rights organizations has voiced concerns that the Hatch Amendment's regulations are ambiguous and constitute an improper extension of federal authority into local classrooms. In 1985, the coalition developed guidelines for educators to avert the potential "chilling effect" of the Amendment on the public school curriculum ("Saying Hatch Rules Are Unclear," 1985, p. 3). The guidelines emphasize that the Amendment applies only to federally funded activities in extremely limited domains involving psychiatric or psychological testing or treatment ("Hatch Amendment," 1985).

Perhaps realizing that most aspects of the public school curriculum are not subject to the federal Hatch Amendment, conservative parent groups recently have focused their attention

on securing state legislation to protect students by requiring parental permission for their children to participate in a variety of state-funded activities. Pupil protection laws have been introduced in a number of states and enacted in Arizona, California, Missouri, and Oklahoma. These efforts to secure legislative backing for parental rights to control their children's activities in public schools seem destined to continue. There is some sentiment that while the federal Hatch Amendment and state pupil protection laws entitle students only to exemptions, the ultimate goal of the sponsors of such measures is to bring about alterations in the public school curriculum (Lewis, 1985).

Religious Accommodations

In addition to requests for religious exemptions from public school activities and assignments, other religious accommodations have been controversial. For example, "release time" programs in which students are released from their regular instructional program to receive religious education have evoked significant litigation. The Supreme Court has struck down such release time programs if the religious instruction is provided on public school grounds (McCollum v. Board of Education, 1948). The Court, however, has allowed release time programs in which the religious instruction is provided off public school premises. Recognizing that the state must not be hostile toward religion, the Court declared that "when the State encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the

best of our traditions" (Zorach v. Clauson, 1952, pp. 313-314). A release time program has even been upheld where students receive an hour of religious instruction each week in a mobile unit parked on the edge of school property (Smith v. Smith, 1975). However, courts have not allowed the award of course credit for such instruction offered by religious organizations (Lanner v. Wimmer, 1981).

Some parents have not been content with release time programs and have asserted a free exercise right for their children to be exposed to Christian tenets in public schools. They argue that because of the pervasiveness of "secular humanism" in public education, Christian doctrine should be taught to provide students with a choice. In other words, they contend that since public schools are currently promoting an antitheistic faith, Christian doctrine deserves equal treatment in the curriculum. Advocates of this position assert that the inclusion of theistic tenets in the curriculum will ensure academic freedom by exposing students to a range of ideas (Leitch, 1985, p. 166). The federal courts, however, have not endorsed the contention that all instruction is actually religious in nature (promoting theism or antitheism) and that religion in the broad sense is always advanced in education. As noted earlier, the federal judiciary maintains that there exists a body of secular, religiously neutral subject matter that is appropriate for public schools, whereas the advancement of theistic or antitheistic doctrine is unconstitutional.

The controversy over instruction pertaining to the origin of life is illustrative of efforts to secure legal support for religious accommodations in public schools. Because fundamentalist groups have not convinced courts that the teaching of evolution unconstitutionally advances secular humanism (Epperson v. Arkansas, 1968), they have sought laws requiring equal time for the Biblical account of creation. Laws barring instruction in evolution, unless accompanied by instruction in creationism, have been introduced in numerous states and passed in three states (Tennessee, Arkansas, and Louisiana).

When challenged under the first amendment, however, these "equal time" laws have not withstood judicial scrutiny. The Tennessee law--stipulating that evolution could not be taught as fact and requiring equal emphasis on creationism whenever evolution was introduced in the curriculum or text books--was invalidated by the Sixth Circuit Court of Appeals in 1975 (Daniel v. Waters, 1975). Striking down a similar Arkansas law in 1982, the federal district court reasoned that evolution is grounded in scientific knowledge and properly belongs in the science curriculum, whereas creationism is a religious doctrine. In addition, the court declared that even if evolution did unconstitutionally promote an antitheistic creed, introduction of an alternative religious belief (i.e., the Biblical account of creation) would not reduce the constitutional violation (McLean v. Arkansas Bd. of Educ., 1982). More recently, the United States Supreme Court invalidated a Louisiana "balanced treatment" law,

concluding that the law was designed to discredit legitimate scientific information about evolution and give a clear preference to the Biblical account of creation in violation of the establishment clause (Edwards v. Aguillard, 1987).

Teaching About Religion

While courts have not been receptive to requests for curriculum accommodations that promote particular religious tenets, instruction about religion certainly is permissible. Indeed, the Supreme Court has recognized that the academic study of religion is necessary for students to gain an accurate understanding of historical events (School District of Abington Township v. Schempp, 1963).

Comparative religion classes, Bible study courses, and units on religion in social studies courses do not violate the establishment clause as long as they are academic in nature. But the focus of such instruction must be to educate students about religion rather than to inculcate religious values. Courts have struck down Bible study courses where personnel associated with churches have developed the courses or where the materials were designed to influence students' religious beliefs (Crockett v. Sorenson, 1983; Hall v. Board of School Commissioners, 1981; Wiley v. Franklin, 1980; Vaughn v. Reed, 1970). While recognizing the public school's appropriate role in helping students understand the cultural and historical influence of

religion in our society, courts have held that it is not the role of the public school to guide the spiritual development of children.

Some recent disputes have focused on allegations that public schools have been remiss in presenting factual information regarding the important cultural and historical impact of religion in western civilization. Several studies have documented that the influence of religion has been slighted in text books pertaining to American history, political science, sociology, literature, and world history (Davis et al., 1986; Haynes, 1986; Vitz, 1986). The filtering of information on religion has been attributed in part to educators' and publishers' apprehension over crossing the line that separates teaching about religion from religious indoctrination (Association for Supervision and Curriculum Development [ASCD], 1987).

In 1987, the Association for Supervision and Curriculum Development convened a policy panel to provide guidance to school policymakers as they make decisions regarding the proper role of religion in the public school curriculum. Among other things, the panel recommended that publishers should revise textbooks and other instructional materials to provide sufficient treatment of diverse religions and their impact on western civilization and that textbook selection committees should be sensitive to religious distortions in reviewing potential texts. The ASCD panel concluded that it is unfortunate that fear of promoting religion has resulted in omissions from the curriculum which in

turn provide ammunition for those contending that a "secular" faith is being advanced in public schools (ASCD, 1987).

Conclusion

The volatile controversies involving religion and the public school curriculum show no signs of dissipating in the near future, and these disputes raise complex issues that do not lend themselves to simplistic solutions. While governmental neutrality toward religion is the guiding principle, this is an elusive concept that is easier to state than apply. There is a fine line between permissible accommodation and unconstitutional advancement of religion. Also, the distinction between wholesome neutrality and hostility toward religion is not always clear. While the first amendment was intended to shield certain subjects from majority rule, the role of religion in public education has become a volatile political issue, with candidates for public office being pressed to take positions in the debate.

There is general agreement that public schools promote values and that, indeed, one purpose of public education is to inculcate values associated with good citizenship in a democratic society. However, with differing viewpoints about the relationship between religion and morality, consensus has not been reached on how values should be promoted or on who should make this determination. Some contend that all moral education is religious education, in that particular world views are promoted, while others argue that values necessary for citizenship (e.g., honesty) can be taught without reliance on or disrespect for

religious tenets. The 1987 ASCD panel concluded that "faced with the prospect of picking their way through a minefield of conflicting opinions, educators generally assert that adherence to moral precepts is essential to society and then leave it to individuals to decide, in the light of their own religious beliefs, what these precepts are" (ASCD, 1987, p. 15).

Policymakers need to be sensitive to the implications of church/state controversies for the academic integrity of the public school program. Allegations that public schools are promoting secular humanism are particularly troublesome because most aspects of the curriculum are under attack. Merely recognizing that the first amendment prohibits public schools from advancing theistic or antitheistic tenets is insufficient to combat these charges; policymakers need to take an active role in delineating what constitutes the essential academic curriculum that should not be compromised in public schools. And parents need to be informed regarding the rationale for curriculum decisions as well as the process for challenging such decisions. With greater understanding of the educational justification for components of the public school program, some potential critics might be persuaded that the curriculum does not threaten their religious beliefs.

State policymakers also can take steps to ensure that the role of religion in the development of civilization is treated comprehensively in public schools. This will necessitate inservice programs for textbook review committees and teachers as

well as revisions in curriculum guides. Clear distinctions need to be drawn between the permissible exposure of students to religion from a cultural and historical perspective and the unconstitutional indoctrination of sectarian tenets. If distortions and omissions of religious facts are corrected in the public school curriculum, perhaps some charges that public schools are promoting secular humanism can be averted.

Regardless of how careful educators are in presenting religious facts accurately and exhibiting respect toward all faiths, however, some public school content will be offensive to particular sectarian beliefs. How far schools should go in allowing religious exemptions will likely remain controversial. There is an inherent tension between the state's duty to ensure an educated citizenry and parents' rights to direct their children's education in conformance with their religious beliefs. If parents are given complete latitude in determining what content their children will study, the state might jeopardize its obligation to ensure an educated citizenry. But if parents are provided little or no choice in curricular matters affecting their children, their fundamental right to guide the upbringing of their offspring might be compromised. Striking the appropriate balance between state and parental interests in educational matters is a major challenge facing policymakers and the courts.

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